

FILED

03-31-2022

George L. Christenson

Clerk of Circuit Court

P.O. Box 2077

Honorable Laura Gramling  
Perez-32

Branch 32

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

JOHNNY P. SMITH,  
2354 State Route, Lot 26  
Endicott, New York 13760,

Plaintiff,

and

NEXT LEVEL ADMINISTRATORS, LLC,  
A Foreign Corporation  
1301 6<sup>th</sup> Avenue West  
Bradenton, Florida 34205  
Registered Agent: Corporation Service Company  
8040 Excelsior Drive, Suite 400  
Madison, Wisconsin 53717,

Involuntary Plaintiff,

v.

LOVE'S TRAVEL STOPS & COUNTRY STORES, INC.,  
A Foreign Business Corporation  
10601 North Pennsylvania Avenue  
Oklahoma City, Oklahoma 73120  
Registered Agent: CT Corporation System  
301 South Bedford Street, Suite 1  
Madison, Wisconsin 53703,

ABC INSURANCE COMPANY,  
A Foreign or Domestic Corporation  
Present Name and Address of Unknown,

DEF COMPANY,  
A Foreign or Domestic Corporation  
Present Name and Address of Unknown,

GHI INSURANCE COMPANY,  
A Foreign or Domestic Corporation  
Present Name and Address of Unknown,

JKL COMPANY,  
A Foreign or Domestic Corporation  
Present Name and Address of Unknown,

MNO INSURANCE COMPANY,  
A Foreign or Domestic Corporation

Case No:

Case Code No: 30107

Amount Claimed is  
Greater Than \$10,000



Present Name and Address of Unknown,  
Defendants.

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**SUMMONS**

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THE STATE OF WISCONSIN

TO EACH PERSON NAMED ABOVE AS A DEFENDANT OR AN INVOLUNTARY  
PLAINTIFF

YOU ARE HEREBY NOTIFIED that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint which is attached states the nature and basis of the legal action.

Within forty-five (45) days after receiving this Summons, you must respond with a written Answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Circuit Court for Milwaukee County whose address is 901 N. 9<sup>th</sup> Street, Milwaukee, Wisconsin 53233 and to the Plaintiff's attorneys, GRUBER LAW OFFICES, LLC, by Attorneys William J. Waltenberger and Richard B. Hess, whose address is 100 East Wisconsin Avenue, Suite 2800, Milwaukee, Wisconsin 53202. You may have an attorney help or represent you.

If you do not provide a proper Answer within forty-five (45) days, the Court may grant Judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A Judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or

seizure of property.

Dated at Milwaukee, Wisconsin this 31st day of March, 2022

GRUBER LAW OFFICES, LLC  
Attorneys for Plaintiff, Johnny P. Smith

By: /s/William J. Waltenberger  
William J. Waltenberger  
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Richard B. Hess  
State Bar No.: 1024672  
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George L. Christenson

Clerk of Circuit Court

Case No. 2022CV002077

Honorable Laura Gramling

Perez-32

Branch 32

STATE OF WISCONSINCIRCUIT COURTMILWAUKEE COUNTY

JOHNNY P. SMITH,  
2354 State Route, Lot 26  
Endicott, New York 13760,

Plaintiff,

and

NEXT LEVEL ADMINISTRATORS, LLC,  
A Foreign Corporation  
1301 6<sup>th</sup> Avenue West  
Bradenton, Florida 34205  
Registered Agent: Corporation Service Company  
8040 Excelsior Drive, Suite 400  
Madison, Wisconsin 53717,

Involuntary Plaintiff,

v.

LOVE'S TRAVEL STOPS & COUNTRY STORES, INC.,  
A Foreign Business Corporation  
10601 North Pennsylvania Avenue  
Oklahoma City, Oklahoma 73120  
Registered Agent: CT Corporation System  
301 South Bedford Street, Suite 1  
Madison, Wisconsin 53703,

ABC INSURANCE COMPANY,  
A Foreign or Domestic Corporation  
Present Name and Address of Unknown,

DEF COMPANY,  
A Foreign or Domestic Corporation  
Present Name and Address of Unknown,

GHI INSURANCE COMPANY,  
A Foreign or Domestic Corporation  
Present Name and Address of Unknown,

JKL COMPANY,  
A Foreign or Domestic Corporation  
Present Name and Address of Unknown,

MNO INSURANCE COMPANY,  
A Foreign or Domestic Corporation

**COMPLAINT**

Case No:

Case Code No: 30107

Amount Claimed is  
Greater Than \$10,000

Present Name and Address of Unknown,

Defendants.

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**NOW COMES** the Plaintiff, JOHNNY P. SMITH, by his attorneys, Gruber Law Offices, LLC., by Attorneys William J. Waltenberger and Richard B. Hess, and alleges as follows:

1. That the Plaintiff, JOHNNY P. SMITH, is an adult individual residing at 2354 State Route, Lot 26, Village of Endicott, Broome County, State of New York, 13760.

2. That the Involuntary Plaintiff, NEXT LEVEL ADMINISTRATORS LLC, is a foreign corporation, organized and existing under the laws of the State of Florida, duly licensed to do business in the State of Wisconsin, with its principal offices located at 1301 6<sup>th</sup> Avenue West, in the City of Bradenton, Manatee County, State of Florida, 34205; and the offices of their registered agent, Corporation Service Company, are located at 8040 Excelsior Drive, Suite 400, Madison, Wisconsin, 53717; that upon information and belief, the Involuntary Plaintiff NEXT LEVEL ADMINISTRATORS LLC, at all times material herein was the worker's compensation insurance company providing coverage to the Plaintiff, JOHNNY P. SMITH, who was in the course and scope of his employment with Brockport Transport, Inc. at the time of the alleged incident; that the Involuntary Plaintiff, NEXT LEVEL ADMINISTRATORS, LLC, provided monies for health care services and disability coverage to said Plaintiff as a result of the injuries sustained in the alleged incident; that the Plaintiff, JOHNNY P. SMITH, alleges doubt as to whether the Involuntary Plaintiff, NEXT LEVEL ADMINISTRATORS LLC, is truly subrogated or interested in this action, but that said Involuntary Plaintiff is joined as a party for the purpose of complying with the provisions of § 803.03 and § 102.29, Wis. Stats.

3. That the Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., is upon information and belief a foreign business corporation organized and existing under the laws

of the State of Oklahoma, duly licensed to do business in the State of Wisconsin, with its principal office located at 10601 N. Pennsylvania Avenue, Oklahoma City, Oklahoma County, Oklahoma, 53703, that the Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., was at all times material herein the owner and/or lessee of the Love's Travel Stop located at 9650 S. 20<sup>th</sup> Street, Oak Creek, County of Milwaukee, State of Wisconsin, 53154, which is the subject of this lawsuit.

4. That the Defendant, ABC INSURANCE COMPANY, is a foreign or domestic corporation whose name, address, registered agent, registered offices and state of incorporation of which are presently unknown to Plaintiff, JOHNNY P. SMITH, and that in the place of the actual name of the Defendant Company, a fictitious name is being used pursuant to § 807.12, Wis. Stats. That upon information and belief this Defendant is engaged in the business of writing and selling liability insurance prior to and on the date of this incident, February 19, 2020; that upon information and belief the Defendant corporation had issued a policy of insurance to Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., insuring them or any of their employees or agents against any liability imposed by law and further insuring them against any damages for which it might be liable to others by virtue of the negligence of their employee and/or agents; that by reason of said insurance policy and the alleged negligence of the Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., and the provisions of § 803.04(2), Wis. Stats., the Defendant, ABC INSURANCE COMPANY, is a proper party Defendant herein.

5. That the Defendant, DEF COMPANY, is a foreign or domestic corporation whose name, address, registered agent, registered offices and state of incorporation of which are presently unknown to Plaintiff, JOHNNY P. SMITH, and that in the place of the actual name of the Defendant Company, a fictitious name is being used pursuant to § 807.12, Wis. Stats. That upon

information and belief this Defendant is engaged in the business of snow and ice management prior to and on the date of this incident, February 19, 2020; that upon information and belief the Defendant corporation was responsible for snow and ice management of the Love's Travel Stop located at 9650 S. 20<sup>th</sup> Street, Oak Creek, County of Milwaukee, State of Wisconsin, 53154 the alleged negligence of the Defendant, DEF COMPANY, and the provisions of § 803.04(2), Wis. Stats., the Defendant, DEF COMPANY, is a proper party Defendant herein.

6. That the Defendant, GHI INSURANCE COMPANY, is a foreign or domestic corporation whose name, address, registered agent, registered offices and state of incorporation of which are presently unknown to Plaintiff, JOHNNY P. SMITH, and that in the place of the actual name of the Defendant Company, a fictitious name is being used pursuant to § 807.12, Wis. Stats. That upon information and belief this Defendant is engaged in the business of writing and selling liability insurance prior to and on the date of this incident, February 19, 2020; that upon information and belief the Defendant corporation had issued a policy of insurance to Defendant, DEF COMPANY, insuring them or any of their employees or agents against any liability imposed by law and further insuring them against any damages for which it might be liable to others by virtue of the negligence of their employee and/or agents; that by reason of said insurance policy and the alleged negligence of the Defendant, DEF COMPANY., and the provisions of § 803.04(2), Wis. Stats., the Defendant, GHI INSURANCE COMPANY, is a proper party Defendant herein.

7. That the Defendant, JKL COMPANY, is a foreign or domestic corporation whose name, address, registered agent, registered offices and state of incorporation of which are presently unknown to Plaintiff, JOHNNY P. SMITH, and that in the place of the actual name of the Defendant Company, a fictitious name is being used pursuant to § 807.12, Wis. Stats. That upon information and belief this Defendant is engaged in the business of property management prior to

and on the date of this incident, February 19, 2020; that upon information and belief the Defendant corporation was responsible for property management of the Love's Travel Stop located at 9650 S. 20<sup>th</sup> Street, Oak Creek, County of Milwaukee, State of Wisconsin, 53154 the alleged negligence of the Defendant, JKL COMPANY, and the provisions of § 803.04(2), Wis. Stats., the Defendant, JKL COMPANY, is a proper party Defendant herein.

8. That the Defendant, MNO INSURANCE COMPANY, is a foreign or domestic corporation whose name, address, registered agent, registered offices and state of incorporation of which are presently unknown to Plaintiff, JOHNNY P. SMITH, and that in the place of the actual name of the Defendant Company, a fictitious name is being used pursuant to § 807.12, Wis. Stats. That upon information and belief this Defendant is engaged in the business of writing and selling liability insurance prior to and on the date of this incident, February 19, 2020; that upon information and belief the Defendant corporation had issued a policy of insurance to Defendant, JKL COMPANY, insuring them or any of their employees or agents against any liability imposed by law and further insuring them against any damages for which it might be liable to others by virtue of the negligence of their employee and/or agents; that by reason of said insurance policy and the alleged negligence of the Defendant, JKL COMPANY., and the provisions of § 803.04(2), Wis. Stats., the Defendant, MNO INSURANCE COMPANY, is a proper party Defendant herein.

**FIRST CAUSE OF ACTION: NEGLIGENCE OF LOVE'S TRAVEL STOPS &  
COUNTRY STORES, INC.**

9. Re-allege and incorporate herein, as though fully set forth, all the allegations contained in paragraphs one (1) through eight (8) with the same force and effect.

10. That on or about the 19<sup>th</sup> day of February 2020, the Plaintiff, JOHNNY P. SMITH, was lawfully on the premises located at 9650 S. 20<sup>th</sup> Street, Oak Creek, County of



Milwaukee, State of Wisconsin 53154, which was negligently inspected and maintained by the Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., when the Plaintiff, JOHNNY P. SMITH slipped and fell on ice on the premises.

11. That the Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., failed to exercise ordinary care in the inspection, maintenance and upkeep of the premises located at 9650 S. 20<sup>th</sup> Street, Oak Creek, County of Milwaukee, State of Wisconsin 53154, thereby creating a dangerous condition.

12. That the foregoing acts of negligence on the part of the Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., was the direct and proximate cause of the injuries and damages sustained by the Plaintiff, JOHNNY P. SMITH.

13. That as a direct and proximate result of the negligence of the Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., the Plaintiff, JOHNNY P. SMITH, was seriously and permanently injured, suffered great pain of body and mind, was obliged and may continue to be obliged in the future to expend monies for medical care and attendance, and was prevented from engaging in his normal activities, all in an amount to be determined by the trier of fact.

**SECOND CAUSE OF ACTION: SAFE PLACE: LOVE'S TRAVEL STOPS &  
COUNTRY STORES, INC.**

14. Re-allege and incorporate herein, as though more fully set forth, all the allegations contained in paragraphs one (1) through thirteen (13) above, with the same force and effect.

15. That on or about the 19<sup>th</sup> day of February 2020, and at all times material herein, the Plaintiff, JOHNNY P. SMITH, was a frequenter, as said term is used in Chapter 101, Wisconsin Statutes, upon the premises operated by the Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., located at 9650 S. 20<sup>th</sup> Street, Oak Creek, County of Milwaukee,

State of Wisconsin 53154, when the Plaintiff, JOHNNY P. SMITH, slipped and fell on ice in a dangerous and negligently maintained area, causing him to sustain serious and permanent injuries.

16. That the Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., individually and/or through their agents, servants and/or employees, were negligent and careless, and failed to properly inspect and/or maintain the premises located at 9650 S. 20<sup>th</sup> Street, Oak Creek, County of Milwaukee, State of Wisconsin 53154; and that as the owner and/or operator and/or lessee of said property the Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., had a duty to keep the property so and maintained so as to render the same as safe as the nature of the premises will permit, adopt and use methods and processes reasonable and adequate to render the premises safe and properly maintain, inspect, and repair the premises in question pursuant to the provisions of Wisconsin's Safe Place Statute, Wis. Stat. Section 101.11.

17. That the Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., individually and/or through their agents, servants and/or employees, breached said duty and also failed to maintain the property located 9650 S. 20<sup>th</sup> Street, Oak Creek, County of Milwaukee, State of Wisconsin 53154 so as to render said property as safe as the nature of the premises would permit, in violation of Wisconsin's Safe Place Statute, Wis. Stat. Section 101.11.

18. That the Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., individually and/or through their agents, servants and/or employees, knew or in the exercise of reasonable care, should have known, that the premises located 9650 S. 20<sup>th</sup> Street, Oak Creek, County of Milwaukee, State of Wisconsin 53154 were unsafe for those lawfully on the property and exposed such persons to unreasonable risks of injury.

19. That the Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., was negligent in the manner in which it maintained, controlled, supervised and managed the premises located 9650 S. 20<sup>th</sup> Street, Oak Creek, County of Milwaukee, State of Wisconsin 53154 in that it was in a hazardous and dangerous condition; and it was otherwise negligent.

20. That as a direct and proximate cause of the Defendant's failure to maintain the premises as safe as the nature of the premises would reasonably allow, the Plaintiff, JOHNNY P. SMITH, was seriously and permanently injured, suffered great pain of body and mind, was obliged and may continue to be obliged in the future to expend monies for medical care and attendance, and was prevented from engaging in his normal activities, all in an amount to be determined by the trier of fact.

**THIRD CAUSE OF ACTION: NEGLIGENCE OF DEF COMPANY**

21. Re-allege and incorporate herein, as though fully set forth, all the allegations contained in paragraphs one (1) through twenty (20) with the same force and effect.

22. That on or about the 19<sup>th</sup> day of February 2020, the Plaintiff, JOHNNY P. SMITH, was lawfully on the premises located at 9650 S. 20<sup>th</sup> Street, Oak Creek, County of Milwaukee, State of Wisconsin 53154, which was negligently inspected and maintained by the Defendant, DEF COMPANY, when the Plaintiff, JOHNNY P. SMITH slipped and fell on ice on the premises.

23. That the Defendant, DEF COMPANY, failed to exercise ordinary care in the inspection, maintenance and upkeep of the premises located at 9650 S. 20<sup>th</sup> Street, Oak Creek, County of Milwaukee, State of Wisconsin 53154, thereby creating a dangerous condition.

24. That the foregoing acts of negligence on the part of the Defendant, DEF COMPANY, was the direct and proximate cause of the injuries and damages sustained by the Plaintiff, JOHNNY P. SMITH.

25. That as a direct and proximate result of the negligence of the Defendant, DEF COMPANY, the Plaintiff, JOHNNY P. SMITH, was seriously and permanently injured, suffered great pain of body and mind, was obliged and may continue to be obliged in the future to expend monies for medical care and attendance, and was prevented from engaging in his normal activities, all in an amount to be determined by the trier of fact.

**FOURTH CAUSE OF ACTION: NEGLIGENCE OF JKL COMPANY**

26. Re-allege and incorporate herein, as though fully set forth, all the allegations contained in paragraphs one (1) through twenty-five (25) with the same force and effect.

27. That on or about the 19<sup>th</sup> day of February 2020, the Plaintiff, JOHNNY P. SMITH, was lawfully on the premises located at 9650 S. 20<sup>th</sup> Street, Oak Creek, County of Milwaukee, State of Wisconsin 53154, which was negligently inspected and maintained by the Defendant, JKL COMPANY, when the Plaintiff, JOHNNY P. SMITH slipped and fell on ice on the premises.

28. That the Defendant, JKL COMPANY, failed to exercise ordinary care in the inspection, maintenance and upkeep of the premises located at 9650 S. 20<sup>th</sup> Street, Oak Creek, County of Milwaukee, State of Wisconsin 53154, thereby creating a dangerous condition.

29. That the foregoing acts of negligence on the part of the Defendant, JKL COMPANY, was the direct and proximate cause of the injuries and damages sustained by the Plaintiff, JOHNNY P. SMITH.

30. That as a direct and proximate result of the negligence of the Defendant, JKL COMPANY, the Plaintiff, JOHNNY P. SMITH, was seriously and permanently injured, suffered great pain of body and mind, was obliged and may continue to be obliged in the future to expend monies for medical care and attendance, and was prevented from engaging in his normal activities, all in an amount to be determined by the trier of fact.

**WHEREFORE**, the Plaintiff, JOHNNY P. SMITH, demands judgment against the Defendant, LOVE'S TRAVEL STOPS & COUNTRY STORES, INC., ABC INSURANCE COMPANY, DEF COMPANY, GHI INSURANCE COMPANY, JKL COMPANY, and MNO INSURANCE COMPANY as follows:

1. On the first cause of action, on behalf of the Plaintiff, JOHNNY P. SMITH, in an amount to be determined by the trier of fact together with the pre-judgment and post-judgment interest, costs, attorney fees and disbursements of this action;
2. On the second cause of action, on behalf of the Plaintiff, JOHNNY P. SMITH, in an amount to be determined by the trier of fact together with the pre-judgment and post-judgment interest, costs, attorney fees and disbursements of this action;
3. On the third cause of action, on behalf of the Plaintiff, JOHNNY P. SMITH, in an amount to be determined by the trier of fact together with the pre-judgment and post-judgment interest, costs, attorney fees and disbursements of this action;
4. On the fourth cause of action, on behalf of the Plaintiff, JOHNNY P. SMITH, in an amount to be determined by the trier of fact together with the pre-judgment and post-judgment interest, costs, attorney fees and disbursements of this action;
5. That in the event of settlement or verdict in favor of the Plaintiff, JOHNNY P. SMITH, said Plaintiff demands judgment for an Order declaring Plaintiff's, JOHNNY P. SMITH, rights to such settlement/verdict proceeds paramount to those of any subrogated party;
6. That in the event of any subrogated party's failure to respond to this Complaint in a timely manner, the Plaintiff, JOHNNY P. SMITH, requests this Court to grant an Order dismissing the subrogated party from this action and barring any claim for subrogation and/or reimbursement, and barring the subrogated party from participating in any judgment or settlement in this action;

7. For any and all other relief the Court deems just and equitable.

**PLAINTIFF HEREBY DEMANDS THAT THE ABOVE ENTITLED  
ACTION BE TRIED BY A JURY OF TWELVE (12) PERSONS**

Dated at Milwaukee, Wisconsin this 31st day of March, 2022

GRUBER LAW OFFICES, LLC  
Attorneys for Plaintiff, Johnny P. Smith

By: /s/William J. Waltenberger  
William J. Waltenberger  
State Bar No.: 1043208  
Email: [wjw@gruber-law.com](mailto:wjw@gruber-law.com)

Richard B. Hess  
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